

House Bill 394 (AS PASSED HOUSE AND SENATE)

By: Representatives Walker of the 107<sup>th</sup>, Willard of the 49<sup>th</sup>, and O'Neal of the 146<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 29 and Title 30 of the Official Code of Georgia Annotated, relating to  
2 guardians and wards, as such title was amended by an Act approved May 5, 2004 (Ga. L.  
3 2004, p. 161), which Act becomes effective July 1, 2005, and to handicapped persons,  
4 respectively, so as to change certain provisions relating to the Department of Human  
5 Services; to add a definition for "public guardian"; to change certain provisions relating to  
6 qualifications of guardians of adults; to change certain provisions relating to order of  
7 preference in selection of guardians of adults; to provide for the appointment of a public  
8 guardian or the Department of Human Resources as a guardian of an adult in certain  
9 circumstances; to change certain provisions relating to the role of the director of a county  
10 department of family and children services; to enact a new chapter relating to public  
11 guardians; to provide for an oath of guardianship; to provide for qualifications and  
12 requirements of a public guardian; to provide for registration of a public guardian with the  
13 probate court; to provide for a bond by the public guardian; to provide for letters of  
14 guardianship; to provide for recordkeeping and reporting; to provide for additional security  
15 on a bond; to provide for revocation of letters of guardianship; to provide for compensation;  
16 to provide for the appropriation of funds for compensation in certain circumstances; to revise  
17 the definition of "director"; to revise certain provisions relating to investigation of reports of  
18 need for protective services; to amend Code Section 31-8-116 of the Official Code of  
19 Georgia Annotated, relating to involuntary transfer of residents discharged from a facility and  
20 return to facility after transfer, so as to revise the notification to go to the Department of  
21 Human Resources; to provide for related matters; to provide for effective dates and  
22 applicability; to repeal conflicting laws; and for other purposes.

23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

24 **SECTION 1.**

25 Title 29 of the Official Code of Georgia Annotated, relating to guardians and wards, as such  
26 title was amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), which Act

becomes effective July 1, 2005, is amended in Code Section 29-1-1, relating to definitions, by inserting after paragraph (16) a new paragraph to read as follows:

"(16.1) 'Public guardian' means an individual or private entity, including a nonprofit entity, appointed pursuant to Chapter 10 of this title."

## SECTION 2.

Said title, as amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), is further amended by striking Code Section 29-4-2, relating to qualifications of guardians selected for adults, in its entirety and inserting in lieu thereof the following:

"29-4-2.

(a) Only an individual may serve as guardian of an adult, except in the event a public guardian or the Department of Human Resources is appointed pursuant to subsection (b.1) of Code Section 29-4-3.

(b) No individual may be appointed as guardian of an adult who:

(1) Is a minor, a ward, or a protected person;

(2) Has a conflict of interest with the adult unless the court determines that the conflict of interest is insubstantial or that the appointment would be in the adult's best interest;

or

(3) Is an owner, operator, or employee of a long-term care or other caregiving institution or facility at which the adult is receiving care, unless related to the adult by blood, marriage, or adoption.

(c) No entity may be appointed as guardian of an adult which:

(1) Has a conflict of interest with the adult unless the court determines that the conflict of interest is insubstantial or that the appointment would be in the adult's best interest;

or

(2) Is a long-term care or other caregiving institution or facility at which the adult is receiving care."

## SECTION 3.

Said title, as amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), is further amended in Code Section 29-4-3, relating to order of preference in selection of guardians of adults, by striking subsection (b) in its entirety and inserting in lieu thereof the following:

"(b) Individuals who are eligible have preference in the following order:

(1) The individual last nominated by the adult in accordance with the provisions of subsection (c) of this Code section;

(2) The spouse of the adult or an individual nominated by the adult's spouse in accordance with the provisions of subsection (d) of this Code section;

(3) An adult child of the adult or an individual nominated by an adult child of the adult in accordance with the provisions of subsection (d) of this Code section;

(4) A parent of the adult or an individual nominated by a parent of the adult in accordance with the provisions of subsection (d) of this Code section;

(5) A guardian appointed during the minority of the adult;

(6) A guardian previously appointed in Georgia or another state;

(7) A friend, relative, or any other individual; ~~and~~

(8) Any other person, including a volunteer to the court, found suitable and appropriate who is willing to accept the appointment; and

~~(9) The county guardian or the director of the department of family and children services of the county of domicile of the adult or of the county in which the adult is found; provided, however, that the director of the county department of family and children services may delegate the guardianship duties to responsible employees of the department.~~

(b.1) If no other person is available to serve as guardian of the ward, the judge may appoint a public guardian in accordance with Chapter 10 of this title. In the event the court determines that there is no public guardian registered in accordance with Chapter 10 of this title appropriately available to serve as guardian for a ward, the court may appoint the Department of Human Resources as guardian. If so appointed, the department shall designate a representative of the department to provide guardian services who shall take the oath of guardianship. If, after having been so appointed, the department presents to the court a public guardian registered in accordance with Chapter 10 of this title or some other person suitable and appropriate to serve as guardian of a ward and willing to so serve, the court shall allow the department to resign and shall appoint such public guardian or such other person. If the department is appointed pursuant to this subsection, it shall be bound by all the requirements of this chapter, except that it shall not be required to post bond or pay any cost or fee of court associated with the guardianship proceeding. If the department is appointed pursuant to this subsection and enters into a contract with an independent contractor for the provision of guardianship services, the expense of providing such services may be paid for from state funds appropriated for public guardians under Chapter 10 of this title or, upon approval of the court, from the estate of the ward."

#### SECTION 4.

Said title, as amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), is further amended by striking Code Section 29-9-10, relating to the role of the director of a county

department of family and children services, in its entirety and inserting in lieu thereof the following:

"29-9-10.

~~The director of the county department of family and children services or~~ When appointed pursuant to subsection (b.1) of Code Section 29-4-3, a duly appointed delegate of the Department of Human Resources is authorized to take the oath of ~~conservatorship or~~ guardianship before the judge of ~~the Probate Court of Fulton County or before the judge of the court making the appointment of conservatorship or guardianship~~ any probate court of this state."

## SECTION 5.

Said title, as amended by an Act approved May 5, 2004 (Ga. L. 2004, p. 161), is further amended by inserting at the end of such title a new chapter to read as follows:

### "CHAPTER 10

29-10-1.

As used in this chapter, the term 'public guardian' means an individual or private entity, including a nonprofit entity, who meets the qualifications required in this chapter and has registered with and been duly approved by the probate court to serve as a public guardian of an adult pursuant to Code Section 29-4-3.

29-10-2.

When appointed pursuant to subsection (b.1) of Code Section 29-4-3, a public guardian is authorized to take the oath of guardianship before the judge of any probate court of this state. In the event of a public guardian that is a private entity, the employee or agent of such entity who will have direct contact with the ward shall take the oath required by this Code section.

29-10-3.

(a) To be eligible to serve as a public guardian, an individual must:

(1) Be at least 18 years of age;

(2) Submit to a criminal background check with satisfactory results as prescribed by the Division of Aging Services of the Department of Human Resources;

(3) Submit to an investigation of the individual's credit history as prescribed by the Division of Aging Services of the Department of Human Resources;

(4) Attend and complete at least 20 hours of training approved by the Division of Aging Services of the Department of Human Resources, including but not limited to training conducted by such division, a professional association, or by the probate court;

(5) Demonstrate competency, education, and experience in guardianships, social work, or case management; and fiduciary integrity to perform the duties of a public guardian;

(6) Demonstrate competency and ability to carry out the values of the ward; and

(7) Agree to abide by the provisions of this chapter and to serve when appointed as public guardian without the ability to decline, except as provided for in Chapter 4 of this title.

(b) To be eligible to serve as a public guardian, an entity must:

(1) Maintain an appropriate level of liability insurance covering all employees and agents who will have direct contact with a ward in an amount or amounts approved by the probate court;

(2) Maintain a record for each employee and agent who will have direct contact with a ward and ensure that each such employee and agent submits to and meets the requirements of subsection (a) of this Code section;

(3) Submit to an investigation of the entity's financial records; and

(4) Agree to abide by the provisions of this chapter and to serve when appointed as public guardian without the ability to decline, except as provided for in Chapter 4 of this title.

(c) An individual or entity shall submit all required documentation as specified by the probate court to show that such individual or entity and such entity's employees and agents meet the requirements of this Code section.

(d) After completion of the initial training, a public guardian or employee or agent of a public guardian who will have direct contact with a ward, if an entity, must complete at least 20 additional hours of training every two years. The initial and subsequent training shall include, but not be limited to, instruction in:

(1) Basic principles of guardianship;

(2) Rights of the ward;

(3) Alternatives to guardianship;

(4) Court procedures;

(5) Legal duties, responsibilities, and roles of guardians;

(6) Fiduciary responsibilities, record keeping, reporting, administrative duties, intake process, and planning;

(7) Availability of resources, public benefits, and social services;

(8) Health care and end-of-life planning;

(9) Mental, developmental, and physical disabilities;

1 (10) Communications;

2 (11) Case management; and

3 (12) Property management.

4 (e) Any costs incurred by a public guardian to comply with these requirements shall be at  
5 the expense of the individual or private entity and shall not be paid with the assets of any  
6 ward.

7 29-10-4.

8 (a) An individual who meets the requirements of Code Section 29-10-3 may be registered  
9 as a public guardian in the probate court of the county in which he or she is domiciled upon  
10 approval by the probate court. Such individual may also be registered in the probate court  
11 of other counties within a reasonable distance of the county in which he or she is domiciled  
12 as approved by such other probate courts.

13 (b) A private entity that meets the requirements of Code Section 29-10-3 may be registered  
14 as a public guardian in the probate court of any county upon approval by such probate  
15 court.

16 (c) The probate court of a county shall have the sole discretion regarding the approval and  
17 registration of public guardians. Each probate court shall maintain a list of public guardians  
18 who have been registered and approved in its county. The Division of Aging Services of  
19 the Department of Human Resources shall maintain a master list of registered public  
20 guardians throughout the state; and the probate courts shall submit, on January 1 and July  
21 1 of each year or more often as required by the division, the list of registered public  
22 guardians in each county to the Division of Aging Services.

23 (d) The Division of Aging Services of the Department of Human Resources shall develop  
24 a standard form that may be used by probate courts in registering public guardians.

25 29-10-5.

26 A public guardian shall give bond with good security, to be judged by the court, in a sum  
27 of not less than \$10,000.00. The bond shall be payable to the court for the benefit of all  
28 concerned. It shall be attested by the judge or clerk of the court and shall be conditioned  
29 upon the faithful discharge of the public guardian's duty as such, as required by law.  
30 Actions on the bond may be brought by any person aggrieved by the misconduct of the  
31 public guardian as provided by law for actions on the bonds of other guardians.

32 29-10-6.

33 The court shall grant to the public guardian separate letters of guardianship upon each  
34 appointment. The public guardian shall be subject to all liabilities and entitled to all the

rights and emoluments provided for other guardians and shall be governed by the law provided for other guardians.

29-10-7.

(a) A public guardian shall keep and maintain proper financial, case control, and statistical records on all matters in which the public guardian serves as guardian.

(b) No report or disclosure of the ward's personal or medical records shall be made except as required or authorized by law.

(c) A public guardian shall file an annual report with the probate court on the operations of the public guardian for the preceding year, in writing, by August 1.

(d) Within six months of appointment as a public guardian, such public guardian shall submit to the probate court for placement in the ward's guardianship file a report on the public guardian's efforts to locate a family member or friend or other individual included in subsection (b) of Code Section 29-4-3 to act as the guardian of the ward and a report on the ward's potential to be restored to capacity.

(e) The public guardian or employee or agent of a public guardian, if a private entity, shall visit the ward at least four times per year and more often as necessary.

(f) A public guardian who is an individual shall serve no more than five wards at any one time. A public guardian that is an entity shall serve no more than 30 wards at any one time. In the discretion of the probate court, these maximum ratios may be increased or decreased for a particular public guardian, in light of all relevant circumstances.

(g) Public guardians, county guardians, and conservators shall be required to work cooperatively together when appointed for the same ward.

29-10-8.

(a) The probate court may require a public guardian to give additional security on the bond or to give an additional bond with security. The court shall have the authority to fix the amount of the bond and shall cite the public guardian to appear and show cause, if any, why the additional bond or security should not be given.

(b) If upon the hearing the public guardian fails to show good cause why the additional bond or additional security should not be given, the court shall issue an order fixing the amount of the bond and direct the public guardian to give additional security on or before a certain date, which date shall be within 30 days of the date of the order.

(c) Should the public guardian fail, refuse, or neglect to give additional bond or additional security on or before the date fixed in the order of the court and fail to show good cause why further time should be allowed, it shall be the duty of the court to remove the public

guardian and to appoint another public guardian for the unexpired term of office. The order of removal shall be recorded as provided for the order of appointment.

29-10-9.

The court may, for good cause shown, revoke the letters of guardianship of the public guardian, require additional security on the public guardian's bond, or issue any other order as is expedient and necessary for the good of any particular guardianship in the hands of the public guardian.

29-10-10.

Public guardians shall receive compensation for their services in accordance with the provisions of Chapter 4 of this title. However, for wards who have insufficient resources or income to pay the compensation provided for in Chapter 4 of this title, at the discretion of the probate court judge, a request for payment for the public guardian to the Division of Aging Services of the Department of Human Resources, as provided for in Code Section 29-10-11, shall be made. A public guardian shall be paid the compensation provided for in Chapter 4 of this title pursuant to Code Section 29-10-11 to the extent that the available funds can meet that expense or, at the discretion of the judge, the public guardian's actual expenses may be reimbursed from the funds pursuant to Code Section 29-10-11.

29-10-11.

(a) The General Assembly is authorized to appropriate state funds, by line item appropriation, for the purpose of providing compensation to public guardians for services to wards who have insufficient resources or income to pay the compensation provided for in Chapter 4 of this title.

(b) Any such funds appropriated shall be administered by the Division of Aging Services of the Department of Human Resources and paid, if funds are available, upon submission of appropriate documentation by the probate court pursuant to Code Section 29-10-10."

## SECTION 6.

Chapter 5 of Title 30 of the Official Code of Georgia Annotated, relating to the protection of disabled adults and elder persons, is amended by striking paragraph (5) of Code Section 30-5-3, relating to definitions, and inserting in its place the following:

"(5) 'Director' means the director of the ~~county department of family and children services~~ Division of Aging Services of the Department of Human Resources, or the director's designee, ~~in the county in which the disabled adult or elder person resides or is present.~~"



**SECTION 7.**

Said chapter is further amended by striking subsections (a) and (h) of Code Section 30-5-5, relating to investigation of reports of need for protective services, and inserting in their respective places the following:

"(a) ~~Any director receiving~~ When the director receives a report that a disabled adult or elder person is in need of protective services, he or she shall conduct or have conducted a prompt and thorough investigation to determine whether the disabled adult or elder person is in need of protective services and what services are needed. The investigation shall include a visit to the person and consultation with others having knowledge of the facts of the particular case. Within ten days after receipt of the report, the director shall acknowledge receipt of the report, in writing, to the person making the report."

"(h) Notwithstanding any other provisions of this Code section, if ~~any~~ the director or adult protection agency employee receives a report or gains knowledge that a disabled adult or elder person is in need of protective services and such disabled adult or elder person may be in imminent danger resulting from abuse, exploitation, or neglect, the director or designee of the director may file a petition with the probate or superior court stating the grounds on which the director or designee of the director believes that the disabled adult or elder person may be in imminent danger and seeking immediate access to such person. The judge, in his or her discretion, may issue an ex parte order requiring the caretaker or any other person at the place where the disabled adult or elder person resides to afford an adult protection agency employee immediate access to such person to determine the person's well-being. If the adult protection agency employee is denied access to the disabled adult or elder person, the employee shall contact immediately a law enforcement officer to assist the employee in enforcing such order. Any person willfully violating any order issued pursuant to this subsection shall be in contempt of the court issuing such order and may be punished accordingly by the judge of the court. The adult protection agency employee shall conduct a brief investigation to determine the condition of the disabled adult or elder person."

**SECTION 8.**

Code Section 31-8-116 of the Official Code of Georgia Annotated, relating to involuntary transfer of residents discharged from a facility and return to facility after transfer, is amended by striking subsection (g) and inserting in its place the following:

"(g) Each resident shall be discharged from a facility after the resident or guardian gives the administrator or person in charge of the facility notice of the resident's desire to be discharged and the date of the expected departure. Where the resident appears to be incapable of living independently of the facility, the facility shall notify the ~~county~~

1 ~~department of family and children services~~ Department of Human Resources in order to  
2 obtain social or protective assistance for the resident immediately. The notice of the  
3 discharge by the resident or guardian, the expected and actual date thereof, and notice to  
4 the department, where required, shall be documented in the resident's records. Upon such  
5 discharge and, if required, notice to the department, the facility is relieved from any further  
6 responsibility for the resident's care, safety, or well-being."

7 **SECTION 9.**

8 (a) Sections 1 through 5 of this Act shall become effective on July 1, 2005, and all  
9 appointments of guardians of the person made pursuant to former Title 29 shall continue in  
10 effect and shall thereafter be governed by the provisions of this Act.

11 (b) Sections 6 through 10 of this Act shall become effective on July 1, 2005.

12 **SECTION 10.**

13 All laws and parts of laws in conflict with this Act are repealed.